

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

SFUND RECORDS CTR
2247201

IN THE MATTER OF:

CASMALIA RESOURCES HAZARDOUS
WASTE MANAGEMENT FACILITY
Santa Barbara County, California

Respondent

Crosby & Overton, Inc.

ADMINISTRATIVE ORDER ON
CONSENT FOR REMOVAL
RESPONSE ACTIVITIES

U.S. EPA Region IX
CERCLA
Docket No. 96-04B

Proceeding Under Section
106(a) of the Comprehensive
Environmental Response,
Compensation, and Liability
Act, as amended, 42 U.S.C.
§ 9606(a)

WHEREAS, on November 22, 1995, EPA Region IX issued Unilateral Administrative Order ("UAO" or "UAO No. 96-04") No. 96-04 requiring a group of twelve Respondents to transport, treat, and dispose of, or arrange for the transport, treatment, and disposal of, contaminated liquids collected from Sump 9B and the Gallery Well at the Casmalia Resources Hazardous Waste Management Facility ("Casmalia Site" or "Site"); and

WHEREAS the companies that received the UAO No. 96-04 had been previously notified by EPA of potential liability at Casmalia but have not been a part of the Steering Committee that formed to negotiate a work agreement with EPA; and

WHEREAS the UAO No. 96-04 was issued, in part, to remove the possible financial advantage of not participating in the Steering Committee and the ongoing negotiations; and

WHEREAS, the UAO required Respondents to perform the UAO work at their expense and without limitation as to its cost; and

WHEREAS, Respondent Crosby & Overton failed to comply with UAO No. 96-04 and initially failed to offer sufficient funds in settlement of the UAO obligations;

NOW, THEREFORE, IT IS ORDERED as follows:

1. This Administrative Order on Consent ("Consent Order") is entered into by the United States Environmental Protection Agency ("EPA") and Crosby and Overton, Inc. ("Respondent") pursuant to the authority vested in the President of the United States by sections 104, 106(a) and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), and 9622, as amended ("CERCLA"), and delegated to the Administrator of the EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C. This authority was further delegated to the Director of the Hazardous Waste Management Division, Region IX, by Region IX Delegations 1290.41 and 1290.42.

2. By entering into this Consent Order, or by taking any action in accordance with it, Respondent does not admit any allegations contained in UAO No. 96-04, nor does Respondent admit liability for any purpose or admit any issues of law or fact or any responsibility for the alleged release or threat of release of any hazardous substances into the environment in connection with the Casmalia Site.

3. In consideration of the Work required by UAO No. 96-04, Respondent shall pay \$25,000 on or before June 1, 1996, and an additional \$25,000 on or before September 1, 1996, to the EPA Hazardous Substance Superfund, as specified in paragraph 5, below ("Initial Payments"). Further, a subsequent payment of \$66,000 ("Subsequent Payment") shall be added to the total amount EPA determines Respondent owes pursuant to the forthcoming Cashout Settlements in connection with the Casmalia Site. Except for the Subsequent Payment, Crosby & Overton shall be subject to the same terms and conditions under the Cashout Settlement procedure as all other parties in its class. Upon receipt from Respondent of full payment in compliance with the terms of this Consent Order and the forthcoming Cashout Settlement procedure, EPA shall rescind UAO No. 96-04 as against Respondent.

4. The Initial Payments made under the terms of this Consent Order are a partial resolution of UAO No. 96-04 and this Consent Order only and shall not be an offset, or a credit against, any additional liability claims or demands that may be made by EPA in connection with the Casmalia Site against Respondent in the future, including any claims or demand made pursuant to the Cashout Settlement procedure. Nothing in this paragraph shall be construed to effect or limit the rights and defenses of Respondent or other persons or parties in actions for contribution.

5. The Initial Payment required under paragraph 3, above, shall be made by

certified check or checks made payable to the "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site name and number, "Casmalia/093H" and the Docket Number of the Order, "UAO No. 96-04." The certified check or checks shall be sent to

U.S. Environmental Protection Agency
Region IX Superfund Accounting
Box No. 360863M
Pittsburgh, PA 15251

A copy of each check, together with the transmittal letter, shall be sent to Karen Ueno, Casmalia Project Manager, Mail Code H-3, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. The Initial Payments received by EPA shall be placed into an EPA site-specific Casmalia account.

6. Except as otherwise provided under this Consent Order, EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for any failure to comply with UAO No. 96-04; provided, however, if Respondent fails to make the Subsequent Payment required by Paragraph 3, above, and/or fails to resolve its Casmalia Site liability in conformance with the terms and conditions of the Cashout Settlement procedure, the covenant not to sue herein shall expire. This covenant not to sue shall take effect as to Respondent upon the receipt by EPA of the Initial Payments required by Respondent under Paragraph 3, above. The covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Consent Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

7. Respondent expressly reserves any and all rights, defenses, claims, demands, and causes of action (including, but not limited to, any right to contribution) that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person.

8. With regard to claims for contribution against Respondent for matters addressed in this Consent Order, the parties agree that Respondent is entitled to protection from contribution actions or claims from persons or parties that have not signed this Consent Order to the extent provided by section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

9. This Consent Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Respondent waives any claim to payment under sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Consent Order.

10. Except as specifically provided in this Consent Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further and except as specifically provided in this Consent Order, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of either this Consent Order or UAO No. 96-04, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform response actions or other activities, including, but not limited to, future transport, treatment, and disposal of contaminated liquids from the Site, or to pay additional costs pursuant to CERCLA or any other applicable law.

The undersigned representative of Respondent, Crosby & Overton, Inc., certifies that (s)/he is fully authorized to enter into the terms and conditions of this Consent Order and to bind the party (s)/he represents to this document.

Agreed this 17th day of June, 1996.

Crosby & Overton, Inc.

BY: 

TITLE: Executive Vice President

It is so ORDERED and Agreed this 20th day of June, 1996.

BY:

for RT Andrew Haley

DATE:

JUN 20 1996

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